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March 24, 2020

**PUBLIC REPORT ON OFFICER INVOLVED SHOOTING OF DAVID MCNABB BY
LAW ENFORCEMENT OFFICERS ON DECEMBER 28, 2018**

The Santa Barbara County District Attorney's Office has completed its review of the investigation, conducted by the Santa Barbara County Sheriff's Office, of the homicide of David McNabb, age 43, occurring on December 28, 2018, in the County of Santa Barbara, California.

The following analysis is based upon investigative reports, coroner's reports, video and audio recordings, photographs, and witness interviews taken during the investigation conducted by the Santa Barbara County Sheriff's Office ("SBSO") and submitted to this office by SBSO Detective Ruben Esparza.

The District Attorney finds the shooting was a justifiable homicide under Penal Code section 196(2).

FACTUAL HISTORY

Summary

On December 28, 2018, Santa Barbara County Sheriffs responded to 5984 Oakhill Drive in Orcutt after reporting party Meghan Vaughan called 911. Ms. Vaughn called authorities after finding her girlfriend, Nicole McNabb, unresponsive in a bathtub and covered in blood. When deputies arrived and made entry into the residence, they found David McNabb standing at the base of the stairs in a hallway armed with a rifle and at least one visible knife. Deputies took tactical positions in the living room and kitchen area where they faced McNabb across an open foyer. McNabb blocked the deputies from getting into any bedroom, any bathroom, and the garage. Due to McNabb blocking off the area where victims might be located and refusing to put down his weapons, deputies were unable to check on Nicole McNabb, the one victim known to be in the house and at least injured at the time.

After trying to talk McNabb into putting down his weapons for over 2 hours, the Special Enforcement Team (SET), developed a plan to use less lethal force to try to separate McNabb from his weapon. The less lethal force was executed and McNabb was hit by less lethal rounds shot by Detectives Travis Henderson and Geoff Roberts, but the rounds did not separate McNabb from his rifle. Rather, the less lethal rounds caused McNabb's left hand to come off of the rifle and caused McNabb to fall towards the ground. McNabb still had control of the rifle with his right hand,. He swung the rifle and pointed it towards multiple deputies who were directly across from McNabb in the hallway. In response to this threat, four deputies fired lethal rounds. McNabb was hit

multiple times. As deputies approached to try to secure McNabb and render aid, he fought and struggled with them. While a medic was trying to treat McNabb's chest wound, McNabb grabbed Deputy Matt Delgado's rifle and tried to pull it away from Deputy Delgado. McNabb then grabbed a knife he had concealed with one hand and grabbed Deputy Delgado's rifle with the other while pulling Deputy Delgado towards him and making stabbing motions. Deputy Delgado shot McNabb in the chest. McNabb stopped fighting and Medic Novak continued to render medical aid. McNabb was later transported to the hospital where he died of multiple gunshot wounds.

Upon searching the house, deputies found three murder victims. Nicole McNabb, age 34, David McNabb's sister, was stabbed and beaten to death in the bathroom tub. Melanie McNabb, age 64, David McNabb's mother, and Carlos Echavarria, age 63, Melanie McNabb's fiancé, were stabbed and their heads were bludgeoned by a sledgehammer. Their bodies were found in the garage. Access to both the bathroom and garage were blocked by McNabb while deputies were trying to get him to put down his weapons and surrender. Two knives were found under the stairs, two more knives were found at the base of the stairs. A fifth knife was found in the bathroom with the blade almost bent in half. The rifle and the sledgehammer were also recovered. Blood was found throughout the house.

Initial Reports

At 8:06pm on December 28, 2018, Meghan Vaughan called 911. Ms. Vaughan had been working all day and was concerned because she had not been able to contact her girlfriend, Nicole McNabb. Ms. Vaughan came back to their shared home at 5984 Oakhill Drive in Orcutt after she got off work that evening. Ms. Vaughan lived there with her girlfriend Nicole McNabb, her girlfriend's mother, Melanie McNabb, her girlfriend's brother, David McNabb, and with Melanie McNabb's fiancé, Carlos Echavarria. When Ms. Vaughan arrived home, she tried to enter through the garage but it was locked. This surprised her because that door was usually kept unlocked. She walked around the back of the house and entered into a bathroom that opened into both the backyard and into the house. In the bathroom, she saw her girlfriend, Nicole McNabb, lying in the bathtub, not moving and covered in blood. Ms. Vaughan immediately ran out of the bathroom, away from the house, and called 911.

Law Enforcement Response

At 8:18pm, Santa Barbara County Sheriffs began arriving at the scene. Senior Deputy Dan Nelson was one of the first to arrive with Deputies Mark Rigger, Jamie Furber, Flavio Vargas, and Matt Cianciarulo. The deputies set up a perimeter and looked for a way inside. Deputy Rigger found an open door and Deputies Nelson, Rigger, Furber, and Vargas entered the residence around 8:27pm. The deputies took cover in a living room area facing a staircase that led to the upstairs. At the base of the stairs in a hallway, David McNabb, who was 6'2" and over 300 pounds, was moving back and forth from behind the stairs peering into the hallway. McNabb refused to come out and yelled at deputies to "Hit me center mass" and to "Do your jobs well!" McNabb held a rifle with a steel barrel and a wood grain stock at the "port arms" position, which is barrel pointed up towards the ceiling and the stock towards the ground. In addition to the rifle, McNabb had a knife approximately 7-8 inches in length tucked into his belt. McNabb attempted to conceal his location several times, by stepping behind the stairwell and out of the line of sight of the deputies.

Due to McNabb's location in the center of the residence in the hallway, he had access to the bedrooms, bathrooms, and garage on the first floor, as well as access to stairs leading to the second story where more bedrooms were believed to be located. Because McNabb was located in that position with a high powered long rifle and continually ignored commands to drop the rifle, it was not possible for deputies to search the residence or check the welfare of anyone else who may have been in the residence. Deputies did not know the status of the injured person in the bathtub and they could not reach her due to McNabb blocking access with his rifle, nor could the deputies confirm or assist any other persons in the residence that were possibly hurt by or hiding from McNabb.

Senior Deputy Nelson knew McNabb because they had both worked together as corrections officers in the Santa Barbara Main Jail in the past. McNabb had previously been let go from that position. McNabb appeared to recognize Senior Deputy Nelson from their previous employment together. Senior Deputy Nelson asked him to surrender, put the rifle down, and asked McNabb what he could do to help him. McNabb stated, "I can't go to prison." When deputies asked McNabb if there was anyone who needed medical attention, McNabb replied by saying, "no one is here" and "I killed them." Senior Deputy Nelson told McNabb several times that they could talk about what happened but that they needed McNabb to put the rifle down and come out from where he was hiding with his hands up. Senior Deputy Nelson said, "We don't want to hurt anybody." McNabb replied, "Well I already did hurt some people. I promise you that, I promise you that. There is nobody here. I killed them. I killed them. You know I got family members in this area. You know, how's that going to look if they're putting money on my books? Are you kidding me? You're going to put money on my books after I've killed three people?" Despite multiple requests to have McNabb come out, he would not. After talking with him for several minutes, communications with McNabb were turned over to Deputy Michael McNeil. As Deputy McNeil asked McNabb to put his weapon down, McNabb made statements such as, "You guys will see what's going on here, you saw the body or blood." Deputy McNeil made several different attempts to get McNabb to put his weapon down. McNabb stated, "I shot somebody, you guys are going to have to come in here and take care of this, you're going to have to come in here and do this." McNabb said, "I know your guys' rules, I have a rifle, you guys have enough to take me out now." Deputy McNeil continued to talk with McNabb telling him that they did not want to harm him and they could work this out. McNabb continued to refuse to put the rifle down and continued to block access to the rest of the house and any other victims.

During the time that the first deputies on scene were in the home, trying to talk down McNabb, the Sheriff's Special Enforcement Team (SET) and the Hostage Negotiation Team (HNT) arrived and started replacing the deputies in the home with SET team members. During this time, Deputy McNeil was continually talking to McNabb and McNabb was becoming less and less verbally responsive, but was still refusing to put the rifle down and let the deputies enter the other areas of the house. Upon an on-scene review of the situation and discussion with the deputies on scene, SET command developed a plan to have SET members Detectives Henderson and Roberts use less-lethal weaponry to try and get McNabb to drop the rifle and surrender. Detective Henderson was armed with a 40 millimeter less lethal launcher, and Detective Roberts was armed with a bean bag shot gun.

The plan was for Detectives Henderson and Roberts, if an opportunity presented itself, to shoot McNabb with less lethal rounds. Once Detective Henderson fired his less lethal launcher, Detective Roberts would immediately begin to fire his beanbag shotgun to assist. The plan would be initiated on Detective Henderson's first shot. The plan was disseminated to the other team members and deputies on scene by Sgt. Gotschall.

Around 9:59pm, as Sgt. Gotschall informed all SET members of the plan, Deputy McNeil was still talking to McNabb. Deputy Phil Farley with K9 Odin were standing near Deputy McNeil, and SET members Deputies Chuck Anderson and Shane Moore were covering them with rifles if needed. SET members Deputies Delgado (rifle), Jeff Owen (rifle), Sgt. Joe Schmidt (rifle), and Detective Roberts (less lethal) were in the living room hallway with the open foyer separating them from McNabb. SET Medic Novak staged outside the front door to assist with any victims. SET members Detective Henderson (less lethal) and Tyler Yeates (rifle) moved through the kitchen to get a better vantage point and close the distance to McNabb. At this point, deputies had been trying to talk McNabb into putting down the rifle and surrendering for approximately an hour and twenty minutes.

Officer Involved Shooting

Detective Henderson noticed that McNabb was routinely removing his right hand from the rifle. McNabb's right hand was the hand near the trigger of the weapon. Detective Henderson decided to wait for this action to occur again once he was given the approval by Sgt. Gotschall to execute the less lethal plan. Detective Henderson related this plan to Senior Deputy Yeates who was positioned next to him as his lethal cover. Detective Henderson estimated he had been in the residence for approximately ten minutes by this time and noted there had been constant attempts by Deputy McNeil to get the suspect to put the rifle down. After being given the approval to start the pre-planned event by Sgt. Gotschall, Detective Henderson was waiting to see the suspect remove his hand from the rifle. Senior Deputy Yeates whispered to him that he saw the second hand was off the rifle. Based on this, Detective Henderson shouted "beanbag" and fired his less lethal launcher at McNabb. His targeting zone was the back of McNabb's left hand. Detective Henderson saw the round impact the back of the McNabb's hand. Detective Henderson cycled his weapon for a follow up shot. At the same time, Detective Roberts fired 4-5 rounds from the beanbag shotgun and McNabb reacted to being hit by the bean bag rounds. Detective Henderson fired a second round, still targeting McNabb's left hand/forearm area. Detective Henderson saw McNabb recoiling from his and Detective Roberts' less lethal rounds. After the less lethal rounds were fired, Deputy Farley released his K9 Odin who ran towards McNabb. The less lethal rounds caused McNabb to initially lose control of the rifle with his left hand and to fall down towards the ground. The less lethal rounds did not cause McNabb to completely lose control of the rifle, as he still had the rifle gripped in his right hand. After reacting to the less lethal rounds, McNabb started to rise from the ground and he re-gripped the rifle. He pointed his rifle in the direction of the deputies at the opposite end of the hallway. These deputies had no cover. When McNabb pointed his rifle at them, Deputies Owen, Delgado, Moore, and Sgt. Schmidt shot lethal rounds toward McNabb who fell back towards the ground. Shots were fired at 10:05pm.

K9 Odin was in the foyer between McNabb and the deputies. When he did not return to Deputy Farley or respond to commands, Deputy Farley became concerned that K9 Odin was hurt during

the shooting. Deputy Farley ran into the area between the deputies and McNabb with no cover. This caused the deputies to move to cover Deputy Farley, because McNabb and his weapons had not been secured. As McNabb was on the ground, it became clear to the deputies that he had been shot, so they called for Medic Novak to render aid. Medic Novak prepared to treat McNabb but McNabb had not been cleared of any other weapons at that point. Medic Novak said he observed a "sucking chest wound" on McNabb so he began to prepare by getting his airway kit and occlusive dressings. At that time, Novak observed McNabb reach over, retrieve a knife, and begin struggling with SET members Deputy Delgado and Detective Roberts, as they attempted to secure McNabb's arms and pin him down.

Because the deputies had weapons in their hands and were in close quarters with McNabb, they had to use their feet to try to contain McNabb's arms. Medic Novak observed approximately 500cc to 1000cc of blood on the tile floor causing deputies to slip and struggle to maintain control of McNabb. McNabb grabbed Deputy Delgado's rifle and pulled it towards McNabb. Deputy Delgado ordered McNabb to stop. Medic Novak said during the struggle the suspect was able to sit up with the knife in his right hand but he went back into a supine position (on his back) and continued to fight with deputies. Medic Novak said, "He had a lot of fight in him. He was going to town, from a supine position." Medic Novak then stepped back and saw McNabb reach towards Deputy Delgado's weapon a second time with his left hand, as if trying to grab the weapon to pull Deputy Delgado closer, while making stabbing motions towards Deputy Delgado with the knife in his right hand. Medic Novak said he heard multiple orders of, "Don't do that!" "Put it down!" being given to McNabb. Due to McNabb still trying to stab deputies and possibly medical personnel and McNabb pulling on Deputy Delgado's rifle, Deputy Delgado shot McNabb one time in the chest. At that point, McNabb stopped moving and deputies were able to secure McNabb and allow Medic Novak to try and assist McNabb. McNabb was transported to the hospital where he later died.

After McNabb was secured, deputies searched the residence. In the bathroom, they found Nicole McNabb murdered in the bathtub. She had been stabbed multiple times and beaten. A bent kitchen knife was on the counter of the bathroom. In the garage, directly behind where McNabb had been standing with his rifle and knives, Melanie McNabb and Carlos Echavarria were found murdered. They had been beaten with a sledgehammer and stabbed. In addition to the sledgehammer in the garage and the bent knife in the bathroom, two other knives were located under the stairs where McNabb could have accessed them. Two additional knives were found at the base of the stairs, believed to have fallen out of McNabb's pocket and belt during the struggle and subsequent medical assistance. A folding knife was found inside McNabb's pocket.

McNabb's Rifle



Knife found at base of the stairs, #1



Knife found at base of the stairs, #2



Folding knife found in McNabb's pocket



Autopsies

David McNabb

On January 3, 2019, Dr. Manuel Montez, a forensic pathologist employed by the SBSO, performed a post-mortem examination of McNabb and obtained toxicological samples. Dr. Montez opined that the cause of death was multiple gunshot wounds. Dr. Montez observed a total of 5 gunshot wounds to McNabb's chest, abdomen, back, and extremities with perforations of the lungs,

diaphragm, liver, intestines, kidney, spleen, stomach and pancreas. Dr. Montez noted 4 graze wounds located on the jaw, chest, and abdomen. Dr. Montez also observed 2 less lethal impact weapon injuries, one on McNabb's left chest area and one on McNabb's left forearm.

Testing of the toxicological samples indicated McNabb had nothing of toxicological significance in his system. Detective Biedinger from SBSO Coroner's Office certified the manner of McNabb's death as homicide.

LEGAL ANALYSIS

Applicable Law¹

Homicide is the killing of one human being by another, either lawfully or unlawfully. Homicide includes murder and manslaughter, which are unlawful, and the acts of excusable and justifiable homicide which are lawful. The shooting of another person in self-defense or in the defense of others is justifiable and not unlawful. Penal Code section 196(2) defines justifiable homicide by public officers. "Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance when necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty." Under California law anyone, including a police officer, who is threatened with an attack that justifies the use of self-defense need not retreat. The person attacked may stand his ground and defend himself, if necessary, by deadly force, even if he might have more easily gained safety by flight. (See *People v. Newcomer* (1897) 118 Cal. 263, 273; *People v. Dawson* (1948) 88 Cal.App.2d 85, 95.)

A police officer may use deadly force where the circumstances create a reasonable fear of death or serious bodily injury in the mind of the officer. *Graham v. Connor* (1989) 490 U.S. 386; *Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334. In *Graham v. Connor* (1989) 490 U.S. 386, the United States Supreme Court held that the reasonableness of the force used "requires careful attention to the facts and circumstances" of the particular incident "including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." (*Id.*, at 396). Further the Court stated, "[t]he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene rather than with the 20/20 vision of hindsight." (*Id.*, at 397). Moreover, "[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments-in circumstances that are tense, uncertain and rapidly evolving-about the amount of force that is necessary in a particular situation." (*Id.*, at 397-398). Under *Graham*, we must avoid substitution our personal notions of proper police procedure for the instantaneous decision of an officer at the scene. "We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes 'reasonable' action may seem quite

¹ Effective January 1, 2020, Penal Code Section 196 was amended to further define a peace officer's use of force as set forth in Penal Code Section 835a. Although Penal Code Section 835a was not in effect at the time of this incident on January 7, 2018, even analyzing this incident under the new Section 835a, the deputies' use of deadly force is reasonable and justified.

different to someone facing a possible assailant than to someone analyzing the question at leisure.” *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347. *Graham’s* definition of reasonableness has been described as “comparatively generous to police in cases where potential danger, emergency conditions or other exigent circumstances are present” (*Roy v. Inhabitants of the City of Lewiston* (1st Cir. 1994) 42 F.3d 691) and also as giving police “...a fairly wide zone of protection in close cases.” *Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334.).

Legal Analysis

On the night of the shooting, SBSO responded to McNabb’s residence after a 911 caller reported that Nicole McNabb was in a bathtub covered in blood. When deputies arrived, McNabb was armed with a rifle and knives. McNabb told deputies that he had killed people that night and that he wanted deputies to kill him. McNabb was also blocking deputies from accessing and helping Nicole McNabb and any other victims in the house. Multiple deputies tried to talk McNabb into putting down his weapons and surrendering for more than two hours. The command staff and the SET members developed a plan to use less lethal force to get McNabb to put down his weapons and surrender. The less lethal plan was executed and did not have the intended effect on McNabb. After being hit with the less lethal force, instead of putting his rifle all the way down and surrendering, McNabb pointed his rifle directly at deputies who were in an open hallway with no cover. When McNabb pointed his rifle at the deputies, four deputies opened fire. The deputies reasonably feared that McNabb would fire at them with the rifle causing great bodily injury or death to any of the deputies present.

After the initial lethal force was used, Deputy Delgado and Detective Roberts tried to secure McNabb and his weapons while also letting Medic Novak give McNabb medical assistance. Even though McNabb was on the ground, he continued to fight with deputies. He pulled on Deputy Delgado’s rifle twice. The second time, McNabb pulled on Deputy Delgado’s rifle, McNabb pulled Deputy Delgado towards him while trying to stab him with one of McNabb’s knives. Fearing that McNabb was going to stab him in his leg or femoral artery or that McNabb would stab Medic Novak or another deputy, Deputy Delgado shot McNabb in the chest. Only then did McNabb stop fighting. Deputy Delgado reasonably feared that McNabb would stab or slash him, Medic Novak or another deputy causing great bodily injury or death with the large knives.

Each of the four deputies who used lethal force that night, reasonably discharged their firearm to stop McNabb from inflicting death or great bodily injury on themselves or their fellow deputies.

CONCLUSION

When David McNabb turned his rifle on deputies, after being asked for more than two hours, to put down the gun and surrender, he created a reasonable fear of death or great bodily injury in the minds of Deputies Owen, Moore, Delgado, and Sgt. Schmidt. When McNabb continued to struggle, pull on Deputy Delgado’s rifle, and try to stab Deputy Delgado, he created reasonable fear of death or great bodily injury in the mind of Deputy Delgado, when Deputy Delgado shot

again. Based on the investigation by the Santa Barbara County Sheriff's Office, applying the law as set forth in PC 196(2), and the cases cited, *supra*, in this report, the officers each acted reasonably in their use of deadly force; therefore, the shooting of David McNabb is a justifiable homicide.